IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUM. SUIT NO. 3758 OF 2000

Kothari Vegetable
Products Ltd., .. Plaintiffs.

vs.

Lumley General Insurance
Ltd., & Anr. .. Defendants.

Mr. Rahul Narichania i/by Motiwala & Co.
for plaintiffs.
None for defendants.

CORAM : S.U.KAMDAR, J.

DATE : 9th January,2006.

P.C.

. The learned counsel appearing for the plaintiffs does not press the suit as against the 2nd defendant. The suit is dismissed as against the 2nd defendant. In so far as the 1st defendant is concerned, the plaintiff has filed three affidavits of service dated 30.11.2005, 23.5.2001 and 23.11.2005 proving that the defendant no. 1 has been served. All the three affidavits are taken on record. Inspite of service the defendant no. 1 has not been represented. No vakalatnama has been filed

and no defence is filed by the defendant no. 1.

2. The present suit is filed for recovery of an amount of Rs. 7,59,471/- = US dollars 16,971.42. It is the case of the plaintiff that the plaintiff purchased from a company known as Gloland (Far East) Pte. Ltd. a consignment of 210 mts of Syrian origin whole Red Lentils for US $ 16,971.42. The defendant no. 1 being an insurance agent insured the said goods. The said goods were thereafter carried by a vessel known as m.v. Grunwald. The defendant no. 1 issued a certificate of insurance bearing No. JK00108 dated 18/9/1996. The said certificate was issued under the Marine Cargo Policy No. 7C/01342886 and the goods were insured for US $ 102,102/-. The said goods were to be discharged at the Mumbai Port through the said vessel. It is the case of the plaintiff that the said vessel arrived at Bombay Port on 15.10.1996 and the consignment was discharged at Mumbai Port. However, it was found that the goods were containing dirt, dust, foreign particles and/or other grains and, therefore, a joint survey was carried out and the goods were found to be in damaged condition. By letter dated 16.3.1998 defendant no. 1 has admitted the claim for damages in the sum of 16,971.42 US Dollars. It is the case of the plaintiff that thus, the defendant no. 1 has no defence and the claim in the present suit is admitted by the defendant no. 1.

In the aforesaid circumstances the present suit has been filed.

3. In spite of service of the filing of the suit, the defendant no. 1 has not filed any written statement nor produced any documents in defence thereof. I have perused the compilation of documents tendered by the plaintiff and the oral evidence which has been also filed of one Raichand Kothari in the form of affidavit. From the perusal of the said affidavit and the documents, I am satisfied that the plaintiff is entitled for the grant of a decree. In that view of the matter, there shall be a decree in favour of the plaintiff and against the defendant no. 1 in terms of prayer clause (a). Suit decreed accordingly. However, there shall be no order as to costs.

4. C.C. expedited.